

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

400M0261

SENATE BILL NO. 50

Introduced by: The Committee on Judiciary at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to make certain members of limited liability companies and
2 partnerships personally responsible for certain tax debts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-48.1 be amended to read as follows:

5 10-45-48.1. Any person who:

- 6 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
7 by this chapter is guilty of a Class 6 felony;
- 8 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
9 becomes due is guilty of a Class 1 misdemeanor;
- 10 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
11 records to the secretary of revenue and regulation or his agents for the purpose of
12 examination is guilty of a Class 1 misdemeanor;
- 13 (4) Fails to file a return required by this chapter within sixty days from the date the return
14 is due is guilty of a Class 1 misdemeanor;
- 15 (5) Engages in business as a retailer under this chapter without obtaining a sales tax



1 license is guilty of a Class 1 misdemeanor;

2 (6) Engages in business as a retailer under this chapter after his sales tax license has been
3 revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

4 (7) Willfully violates any rule of the secretary of revenue and regulation for the
5 administration and enforcement of the provisions of this chapter is guilty of a Class
6 1 misdemeanor;

7 (8) Violates either subdivision (2) or subdivision (4) two or more times in any
8 twelve-month period is guilty of a Class 6 felony;

9 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
10 license after having been notified in writing by the secretary of revenue and
11 regulation that the person is a retailer subject to the provisions of the sales and use
12 tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the
13 person engaging in business as a retailer files an application for a sales tax license
14 and meets all lawful prerequisites for obtaining such license within three days from
15 receipt of written notice from the secretary.

16 For purposes of this section, the term, person, includes corporate officers, members of
17 limited liability companies, or partners having control, supervision of, or charged with the
18 responsibility for making tax returns or payments pursuant to § 10-45-55.

19 Section 2. That § 10-45-55 be amended to read as follows:

20 10-45-55. If a corporation, limited liability company, or partnership subject to tax under this
21 chapter fails for any reason to file the required returns or to pay the tax due, any of its officers,
22 members, or partners having control, or supervision of, or charged with the responsibility for
23 making ~~such~~ the returns and payments shall be personally liable for ~~such~~ the failure. The
24 dissolution of a corporation ~~shall~~, limited liability company, or partnership does not discharge

1 an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation, limited
2 liability company, or partnership to make a return or remit the tax due. The sum due for such
3 a liability may be assessed and collected as provided by law.

4 If the corporate officers, limited liability company members, or partners elect not to be
5 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
6 limited liability company, or partnership shall provide the Department of Revenue and
7 Regulation with a surety bond or certificate of deposit as security for payment of any tax that
8 may become due. The bond or certificate of deposit provided for in this section shall be in an
9 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
10 tax rate. This section does not apply to elected or appointed officials of a municipality if they
11 are bonded pursuant to §§ 9-14-6 and 9-14-6.1.

12 Section 3. That § 10-46-47.1 be amended to read as follows:

13 10-46-47.1. If a corporation, limited liability company, or partnership subject to tax under
14 this chapter fails for any reason to file the required returns or to pay the tax due, any of its
15 officers, members, or partners having control, or supervision of, or charged with the
16 responsibility for making ~~such~~ the returns and payments shall be personally liable for ~~such~~ the
17 failure. The dissolution of a corporation ~~shall~~, limited liability company, or partnership does not
18 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,
19 limited liability company, or partnership to make a return or remit the tax due. The sum due for
20 such a liability may be assessed and collected as provided by law.

21 If the corporate officers, limited liability company members, or partners elect not to be
22 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
23 limited liability company, or partnership shall provide the Department of Revenue and
24 Regulation with a surety bond or certificate of deposit as security for payment of any tax that

1 may become due. The bond or certificate of deposit provided for in this section shall be in an
2 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
3 tax rate. This section does not apply to elected or appointed officials if they are bonded pursuant
4 to §§ 9-14-6 and 9-14-6.1.

5 Section 4. That § 10-46A-13 be amended to read as follows:

6 10-46A-13. If a corporation, limited liability company, or partnership subject to tax under
7 this chapter fails for any reason to file the required returns or to pay the tax due, any of its
8 officers, members, or partners having control, or supervision of, or charged with the
9 responsibility for making ~~such~~ the returns and payments shall be personally liable for ~~such~~ the
10 failure. The dissolution of a corporation ~~shall~~, limited liability company, or partnership does not
11 discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation,
12 limited liability company, or partnership to make a return or remit the tax due. The sum due for
13 such a liability may be assessed and collected as provided by law.

14 If the corporate officers, limited liability company members, or partners elect not to be
15 personally liable for the failure to file the required returns or to pay the tax due, the corporation,
16 limited liability company, or partnership shall provide the Department of Revenue and
17 Regulation with a surety bond or certificate of deposit as security for payment of any tax that
18 may become due. The bond or certificate of deposit provided for in this section shall be in an
19 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
20 tax rate. This section does not apply to elected or appointed officials of a municipality if they
21 are bonded pursuant to §§ 9-14-6 and 9-14-6.1.

22 Section 5. That § 10-46A-13.1 be amended to read as follows:

23 10-46A-13.1. Any person who:

24 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed

1 by this chapter is guilty of a Class 6 felony;

2 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
3 becomes due is guilty of a Class 1 misdemeanor;

4 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
5 records to the secretary of revenue and regulation or his agents for the purpose of
6 examination is guilty of a Class 1 misdemeanor;

7 (4) Fails to file a return required by this chapter within sixty days from the date the return
8 is due is guilty of a Class 1 misdemeanor;

9 (5) Engages in business under this chapter without obtaining a contractor's excise tax
10 license is guilty of a Class 1 misdemeanor;

11 (6) Engages in business under this chapter after his contractor's excise tax license has
12 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

13 (7) Violates either subdivision (2) or subdivision (4) of this section two or more times
14 in any twelve-month period is guilty of a Class 6 felony;

15 (8) Engages in business under this chapter without obtaining a contractor's excise tax
16 license after having been notified in writing by the secretary of revenue and
17 regulation that the person is a contractor subject to the provisions of the contractors'
18 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
19 if the person engaging in business files an application for a contractor's excise tax
20 license and meets all lawful prerequisites for obtaining such license within three days
21 from receipt of written notice from the secretary.

22 For purposes of this section, the term, person, includes corporate officers, members of
23 limited liability companies, or partners having control, supervision of, or charged with the
24 responsibility for making tax returns or payments pursuant to § 10-46A-13.

Section 6. That § 10-46B-11 be amended to read as follows:

10-46B-11. If a corporation, limited liability company, or partnership subject to tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers, members, or partners having control, or supervision of, or charged with the responsibility for making ~~such~~ the returns and payments shall be personally liable for ~~such~~ the failure. The dissolution of a corporation ~~shall~~, limited liability company, or partnership does not discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation, limited liability company, or partnership to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If the corporate officers, limited liability company members, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, or partnership shall provide the Department of Revenue and Regulation with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to elected or appointed officials of a municipality if they are bonded pursuant to §§ 9-14-6 and 9-14-6.1.

Section 7. That § 10-46B-11.1 be amended to read as follows:

10-46B-11.1. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these

1 records to the secretary of revenue and regulation or his agents for the purpose of
2 examination is guilty of a Class 1 misdemeanor;

3 (4) Fails to file a return required by this chapter within sixty days from the date the return
4 is due is guilty of a Class 1 misdemeanor;

5 (5) Engages in business under this chapter without obtaining a contractor's excise tax
6 license is guilty of a Class 1 misdemeanor;

7 (6) Engages in business under this chapter after his contractor's excise tax license has
8 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

9 (7) Violates either subdivision (2) or subdivision (4) two or more times in any
10 twelve-month period is guilty of a Class 6 felony;

11 (8) Engages in business under this chapter without obtaining a contractor's excise tax
12 license after having been notified in writing by the secretary of revenue and
13 regulation that the person is a contractor subject to the provisions of the contractors'
14 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
15 if the person engaging in business files an application for a contractor's excise tax
16 license and meets all lawful prerequisites for obtaining such license within three days
17 from receipt of written notice from the secretary.

18 For purposes of this section, the term, person, includes corporate officers, members of
19 limited liability companies, or partners having control, supervision of, or charged with the
20 responsibility for making tax returns or payments pursuant to § 10-46B-11.

21 Section 8. That § 10-47B-41 be amended to read as follows:

22 10-47B-41. A corporation, limited liability company, or partnership subject to the taxes
23 imposed by this chapter and its corporate officers, members, or partners are jointly and severally
24 liable for the filing of reports or returns and the payment of tax, penalty, and interest due. The

dissolution of a corporation, limited liability company, or partnership does not discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation, limited liability company, or partnership to make a return or remit the tax due. An officer, member or partner subject to personal liability is not discharged from that liability upon vacating the office. An officer, member, or partner may be discharged from future liability upon notifying the secretary in writing. The sum due for such a liability may be assessed and collected as provided by law.

Section 9. That § 10-33A-17 be amended to read as follows:

10-33A-17. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the telecommunications gross receipts tax is guilty of a Class 6 felony;
- (2) Fails to pay the telecommunications gross receipts tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records required by this chapter or refuses to exhibit these records to the department for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business as a telecommunications company under this chapter without obtaining a telecommunications gross receipts tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business as a telecommunications company under this chapter after the company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;
- (7) Willfully violates any rule of the secretary for the administration and enforcement of

the provisions of this chapter is guilty of a Class 1 misdemeanor;

(8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or

(9) Engages in business as a telecommunications company under this chapter without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation of this subdivision if the telecommunications company providing any telecommunications service files an application for a telecommunications gross receipts tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, ~~telecommunications company~~ person, includes corporate officers, members of limited liability companies, or partners having control, supervision of, or charged with the responsibility for making tax returns or payments pursuant to this chapter.

Section 10. That § 10-33A-18 be amended to read as follows:

10-33A-18. If a corporation, limited liability company, or partnership subject to the gross receipts tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers, members, or partners having control, or supervision of, or charged with the responsibility for making ~~such~~ the returns and payments are personally liable for ~~such~~ the failure. The dissolution of a corporation, limited liability company, or partnership does not discharge an ~~officer's~~ officer, member, or partner's liability for a prior failure of the corporation, limited liability company, or partnership to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

1 If any responsible corporate ~~officer elects~~ officers, limited liability company members, or
2 partners elect not to be personally liable for the failure to file the required returns or to pay the
3 tax due, the corporation, limited liability company, or partnership shall provide the department
4 with a surety bond or certificate of deposit as security for payment of any tax that may become
5 due. The bond or certificate of deposit provided for in this section shall be in an amount equal
6 to the estimated annual gross receipts multiplied by the applicable sales or gross receipts tax
7 rate. This section does not apply to elected or appointed officials of a municipality if they are
8 bonded pursuant to §§ 9-14-6 and 9-14-6.1.